UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

JAMAL Y. ELHAJ-CHEHADE, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	Case No. 98B00068
	)	
UNIVERSITY OF TEXAS, SOUTHWESTERN MEDICAL CENTER AT DALLAS Respondent.	)	JUDGE MARVIN H. MORSE Administrative Law Judge

ORDER
(December 14, 1998)

During the third telephonic prehearing conference on December 3, 1998, as confirmed in the Third Prehearing Conference Report and Order (Dec. 9, 1998), Complainant acknowledged that his prior references to Parkland Memorial Hospital in Dallas, Texas (Parkland), were for background and explanation of his claim against the University of Texas, Southwestern Medical Center at Dallas (UTSW), and not an effort to make Parkland a party to this case. In contrast, by facsimile transmission, Complainant has today filed a request to amend the Complaint "to include Parkland and other parties involved as defendants."

The broad ranging comments contained in Complainant's pleading provide no justification for amending the Complaint to make Parkland and/or any other entities respondents in this case.[1] Because UTSW was Complainant's employer, UTSW is the only real party in interest regarding Complainant's claim of failure to be rehired based on citizenship status discrimination. Nothing in the prehearing filings or colloquy at the three prehearing conferences warrants the inference that Complainant's application to be rehired by UTSW as a Clinical Research Fellow implicates his separate applications to Parkland for internship positions or that

[1] *See* 8 C.F.R. §§ 68.1, 68.9(e); FED R. CIV. P. 15(c)(3) (delineating relation back amendments and addition of party respondents). *See, e.g.*, FED. R. CIV. P. 13 (permitting additional claims against parties to the action in certain situations); FED. R. CIV. P. 15(a) (permitting amendment of pleadings "by leave of court or by written consent of the adverse party"); FED. R. CIV. P. 18(a) (permitting joinder of claims against opposing party); FED. R. CIV. P. 20(a) (permitting joinder of parties related to claims "arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.").

"Parkland, et al.," are necessary parties to the dispute before me concerning the Clinical Research Fellowship. As I understand Complainant's hypothesis, the omnibus claim "et al." embraces any individual who had a relationship to Complainant's UTSW employment, including duties at Parkland, or to his applications for employment. The fact that individuals may occupy positions of responsibility at both UTSW and Parkland is an insufficient basis for amending the Complaint to include them as parties. The individuals referred to, however, could be called upon as potential witnesses if further proceeding are necessary in this action.

Complainant's concern that UTSW is attempting "to evade justice" by identifying itself in its correspondence to Complainant as the "University of Texas Southwestern Medical School at Dallas" is misplaced. Regardless of the name referenced, there is no doubt as to the identity of Respondent; either UTSW is amenable to 8 U.S.C. § 1324b administrative law judge jurisdiction (ALJ) or it is not. If it is so amenable, the inquiry as to whether UTSW unlawfully discriminated against Complainant in violation of 8 U.S.C. § 1324b will go forward, and Complainant's allegations of an inadequate investigation by the Office of Special Counsel for Immigration-Related Unfair Employment Practice will be mooted by an ALJ trial *de novo*.

Notwithstanding that Complainant is *pro se*, he must understand that in the administration of the justice system, as in the practice of medicine, there is a need for procedural discipline. The current Rules of Practice and Procedure of this Office, 28 C.F.R. pt. 68 (Rules), do not refer to filing by facsimile. As a matter of convention and for the convenience of the parties and the forum, however, ALJs have accepted such filings when accompanied by a declaration of concurrent mailing of an original document.

Complainant's request to amend filed today is the last pleading by him that I will accept in facsimile form unless: (1) it complies with the limited situations provided for in the amended rule quoted below; and (2) it is accompanied by a true declaration that he has concurrently mailed, postage prepaid, a signed original of the same document. By a pending amendment to the Rules at 28 C.F.R. § 68.6(c), to be published later this month in the Federal Register, legally effective facsimile filings (as distinct from *facsimile copies* for information purposes) of pleadings and briefs will be accepted "**only to toll the running of a time limit**." Moreover, in such instances, the party filing by facsimile "must include in the certification of service a certification that service on the opposing party has also been made by facsimile or by same-day hand delivery, or, if service by facsimile or same-day hand delivery cannot be made, a certification that the document has been served instead by overnight delivery service."

For the reasons stated above, Complainant's request to amend his Complaint to include Parkland and other individuals as party respondents and to include a new discrimination claim related to his internship applications submitted to Parkland is denied.

SO ORDERED.

Dated and entered this 14th day of December, 1998.

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Marvin H. Morse
Administrative Law Judge